Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery on April 21, 2012. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and utilities and if so how much?

Background and Evidence

This tenancy started on October 1, 2004 as a month to month tenancy. Rent is $755.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of $318.00 in advance of the tenancy.

The Landlord said that the Tenant has unpaid rent from prior to October, 2011 of an estimated $3,795.00 and the Tenant has not paid any rent since November, 2011. The Landlord said the rent owing from November, 2011 to May, 2012 is $5,285.00. As the Tenant did not pay these amounts when they were due the Landlord personally delivered a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated March 19, 2012 to the Tenant. The Landlord said the Tenant is living in the rental unit and the Landlord requested an Order of Possession for as soon as possible if their application is successful.

<u>Analysis</u>

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5)(2) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy on March 19, 2012. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than March 24, 2012.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover the amount of unpaid rent that the Landlord applied for which is $5,000.00. This amount is less than the total unpaid rent amount on the 10 Day Notice to End Tenancy for Unpaid Rent which has the amount of $9,080.00. The Landlord said they applied for $5,000.00 to save on the application fee and because they do not know if they will be able to collect the unpaid rent from the Tenant.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenant the $50.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears:	$5,000.00	
Recover filing fee	$ 50.00	
Subtotal:		$5,050.00
Balance Owing		$5,050.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of $5,050.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

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Residential Tenancy Branch